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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

BRADLEY J. SCHAUFENBUEL, et al.,)
)
Plaintiffs,)
)
vs.) No. 09 C 1221
)
INVESTFORCLOSURES FINANCIAL, L.L.C.,)
et al.,) Chicago, Illinois
) August 13, 2009
Defendants.) 10:26 A.M.

TRANSCRIPT OF PROCEEDINGS - Status
BEFORE THE HONORABLE NAN R. NOLAN, Magistrate Judge

APPEARANCES:

For the Plaintiffs: THURSTON LAW OFFICES, P.C.
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Huntley, Illinois 60142
BY: MR. ROBERT CRAIG THURSTON

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For Defendants Guidi,
Martin, and Rodriguez: CAMPION, CURRAN, DUNLOP & LAMB, P.C.
8600 U.S. Highway 14
Suite 201
Crystal Lake, Illinois 60012
BY: MR. RUSSELL WADE BAKER

ALSO PRESENT: MR. ROBERT B. CHRISTIE
MR. FRANCIS X. SANCHEZ
MR. JAMES D. BOURASSA

PAMELA S. WARREN, CSR, RPR
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NOTE: Please notify of correct speaker identification.

1 (Proceedings held in open court:)

2 THE CLERK: 09 C 1221, Schaufenbuel versus
3 InvestForClosures.

4 MR. THURSTON: Good morning, your Honor. Robert
5 Thurston here on behalf of the plaintiffs.

6 THE COURT: Okay.

7 MR. WEINER: Good morning, your Honor. Joel Weiner on
8 behalf of the plaintiffs.

9 THE COURT: Okay.

10 MR. BAKER: Good morning, your Honor. Russ Baker on
11 behalf of defendants Deana Guidi, Darcey Martin, and Tom
12 Rodriguez.

13 THE COURT: Okay.

14 MR. CHRISTIE: And Robert Christie as a friend of the
15 Court.

16 And with me are my former clients, Jim Bourassa and
17 Frank Sanchez.

18 MR. SANCHEZ: Good morning, your Honor.

19 THE COURT: Good morning.

20 Good morning. Are you Mr. Sanchez?

21 MR. SANCHEZ: Yes, ma'am.

22 THE COURT: Okay. And Mr. Bourassa.

23 MR. BOURASSA: Correct.

24 THE COURT: Okay. So you just appeared before Judge
25 Leinenweber.

1 MR. CHRISTIE: We did, Judge. And he approved the
2 motion to withdraw as counsel for the defendant I represented.

3 THE COURT: Okay. So we didn't receive until
4 last -- I mean, until actually this morning, Mr. Christie, this
5 motion that you filed here. We think -- we were confused.

6 MR. CHRISTIE: Yes.

7 THE COURT: We have a -- on the day we issued the
8 temporary restraining order with asset freeze, which is
9 Document 122-2, we also filed an order granting the TRO, which
10 is 121-2.

11 MR. CHRISTIE: That, Judge, I couldn't get off the
12 system for some reason. And I thought maybe you -- they had
13 refiled it, so that was --

14 THE COURT: Because in here --

15 MR. CHRISTIE: -- my mistake, your Honor.

16 THE COURT: -- we have here a plethora of reasons.

17 MR. CHRISTIE: Okay.

18 THE COURT: We have discussed the bond. We have -- I
19 think the -- I mean, I went over very carefully since this
20 morning here there -- the first thing that you think
21 procedurally was wrong is a verification. But -- and I'm glad
22 your clients are here if they are going to be proceeding by
23 themselves.

24 The TRO section, Rule 65(b)(1), if you proceed, you're
25 allowed to proceed -- a party is allowed to proceed without

1 notice on an emergency. And if you are proceeding without
2 notice under (b)(1), you have to have a verification because
3 the -- obviously the Judge wouldn't have the other side there
4 to sign anything. Okay?

5 We were not proceeding without verification here
6 because Mr. Thurston gave everybody plenty of notice.

7 But at least as far as we know, it is either a
8 verification in the complaint or, I suppose in some cases,
9 there could be a separate verification. But there is a
10 verification on the complaint, and that was what was filed back
11 on February 27th, '09.

12 So I certainly will hear from, you know, if you have
13 anything else you want to say about the verification here.
14 That's what our understanding of the law is.

15 MR. CHRISTIE: Was this the class representative's
16 affidavit, your Honor?

17 THE COURT: Yes.

18 MR. CHRISTIE: Again, I (unintelligible) not as a
19 verification, just to say that he read the complaint and that
20 he can be a class representative, not that he is verifying --

21 THE COURT: This is a different one.

22 MR. CHRISTIE: Oh, okay.

23 THE COURT: This is a different one in which he says
24 he -- he has reviewed the complaint in which I am named and
25 verified that the allegations contained therein are true and

1 correct --

2 MR. CHRISTIE: Well, okay --

3 THE COURT: -- to the best of my knowledge.

4 MR. CHRISTIE: My apologies, Judge, because --

5 THE COURT: Okay.

6 MR. CHRISTIE: -- I was looking at the last
7 complaint. I didn't see that. And I will say that I --

8 THE COURT: Now this is attached to the preliminary
9 injunction. Okay.

10 Okay. This is attached to the motion for the
11 preliminary injunction that was February 27th. I mean, if you
12 feel that -- I mean, if you -- if your clients feel like you
13 need another kind of verification or something or there is some
14 law for that, I'm certainly willing to -- we -- but -- but what
15 you are talking about on the TRO is an ex parte TRO where the
16 other side had no notice.

17 MR. CHRISTIE: No, Judge, I don't disagree that the
18 Court can enter a TRO without affidavits or verification. I
19 understand that. It is preferred to have --

20 THE COURT: Right.

21 MR. CHRISTIE: -- evidentiary proof.

22 THE COURT: Right.

23 MR. CHRISTIE: And I apologize. I was not able on my
24 Pacer to get off that one document, and I thought that the --

25 THE COURT: Well, we thought of that. See, we're

1 supposed to enter a separate order freeze so that this can
2 be --

3 MR. CHRISTIE: Yeah.

4 THE COURT: -- then sent to non-parties. Okay?

5 MR. CHRISTIE: Right.

6 THE COURT: I mean, that's what this is where -- so --

7 MR. CHRISTIE: Well, your Honor, I will -- I mean, I
8 don't have the right to withdraw that now, but I'm sure that my
9 clients will withdraw that motion.

10 THE COURT: Right.

11 And in that -- okay. No one -- all right. Now this
12 is the other thing, just so the clients -- okay.

13 Let me ask Mr. Sanchez.

14 MR. SANCHEZ: Yes, ma'am.

15 THE COURT: Are you planning to get a lawyer?

16 MR. SANCHEZ: Well, we'd like to try to -- you know,
17 try to get one, but, of course, you know, the reason that we
18 can't is because we just can't pay him any more. I mean --

19 THE COURT: So, Mr. Bourassa, you actually don't
20 -- you -- I have no authority over you at all because you're in
21 bankruptcy.

22 MR. THURSTON: No, your Honor, the stay has been
23 lifted against Mr. Bourassa --

24 THE COURT: Oh, it has?

25 MR. THURSTON: -- in bankruptcy.

1 Yes. So we're -- he's now before you properly.

2 THE COURT. Oh. Do you have a lawyer?

3 MR. BOURASSA: I do not currently.

4 THE COURT: Have you fellows taken a look at these two
5 opinions?

6 MR. SANCHEZ: Never seen them.

7 THE COURT: You need to see them.

8 MR. SANCHEZ: Right.

9 THE COURT: You need to see them because they have and
10 we have -- now here's the way -- this is what we think. Okay?
11 So we have -- we entered this TRO on August 5th. A TRO lasts
12 for ten days. Okay? We do not count the weekends or holidays.

13 So what's our day we're saying?

14 MR. THURSTON: I think the order said April 19th.

15 THE COURT: Wednesday.

16 MR. THURSTON: Yes, your Honor.

17 THE COURT: April 19th, okay.

18 Okay. I am on -- August 19th, I'm sorry.

19 MR. THURSTON: Oh, I am sorry. August, yes, sorry.

20 THE COURT: Okay. So I'm -- and then under the rule
21 the Court on somebody's motion or the Court's own motion can
22 extend one time for ten more days. Okay? And I am on vacation
23 next week.

24 So I was assuming we would take care of this today
25 with adding another ten-day extension either on Mr. Thurston's

1 motion or the Court's own motion because physically I'm not
2 here.

3 MR. THURSTON: Well, your Honor, that's what I was
4 prepared to say today --

5 THE COURT: Right.

6 MR. THURSTON: -- was to -- I didn't make a written
7 motion, but I was prepared to ask the Court to extend the TRO.

8 THE COURT: For now.

9 MR. THURSTON: Yes.

10 THE COURT: Then I want to make sure -- okay. That
11 takes us then to September 2nd at 3:00 o'clock, I think. And
12 it actually runs on a time too. Okay?

13 Our research shows that one of two things can happen.
14 Okay? You do not extend a TRO further except with consent of
15 the parties or if the moving party wants the Court then to
16 convert it to a preliminary injunction so there is no gap in
17 the time, then we have to be prepared to proceed.

18 So sometimes defendants wish more time to get a
19 lawyer, to prepare, to see what's going on. So they may be
20 willing to extend it. Because otherwise the way I see the law
21 is I have to proceed with this hearing if there is not going to
22 be a gap.

23 So the next time, fellows, that Mr. Thurston is moving
24 to extend it, the one time that's allowed, which is from August
25 19th till September 2nd, on September 2nd you are going to have

1 to be back here, and you are going to either -- I would like to
2 know -- in fact, we're going to give you time today -- if we're
3 going to proceed, we need to know. And I need to know if
4 you're going to have a lawyer or you're going to proceed on
5 papers or what you're going to proceed on.

6 You can individually, each of you, represent yourself
7 pro se for yourself. Your companies cannot proceed pro say
8 though or your former companies. Under our local rule you have
9 to have a lawyer.

10 So I don't know, Mr. Christie, before you leave, are
11 you willing to explain to them what some of this means?

12 MR. CHRISTIE: Yes.

13 THE COURT: I mean, as far as -- I mean, if they are
14 going to -- if they want a hearing, obviously, I think it is in
15 their best interests to agree to extend it so that we don't go
16 full fledge into a hearing without their lawyer not having any
17 time.

18 Don't you think?

19 MR. CHRISTIE: Well, I -- well --

20 THE COURT: Because it doesn't have --

21 MR. CHRISTIE: -- I explained it --

22 THE COURT: -- to be -- right now we have a
23 preliminary hearing set --

24 MR. THURSTON: November 2, I believe.

25 THE COURT: -- November. But I'm not saying November

1 2, but just like enough time so somebody could be rationally
2 ready to do this.

3 MR. CHRISTIE: Well, the next status -- so would we
4 have a status on September 2nd?

5 THE COURT: Well, it is a status, but that's the day
6 the TRO --

7 MR. CHRISTIE: Yeah.

8 THE COURT: -- is going to -- is going to --

9 MR. CHRISTIE: Yeah.

10 THE COURT: And we need, if we're going to proceed, we
11 want by the Friday before that, which is -- oh.

12 That's true. So this is -- we issue a show cause why
13 it should not be converted into a preliminary injunction.
14 That's -- this is all of the procedures under the statute.
15 Okay?

16 MR. CHRISTIE: Uh-huh.

17 THE COURT: And one of the reasons to do it is if you
18 voluntarily agree to extend the TRO until people are ready. I
19 mean, we have -- I mean, if you knew you were -- if you were
20 staying in the case, then there would be enough time to get
21 ready. I just don't know if these fellows are going to be able
22 to go get somebody at the end of summer and -- and I -- and if
23 this show cause happens, I either have to go ahead with the
24 injunction hearing or grant their -- grant their motion to
25 extend the TRO. Now --

1 MR. THURSTON: Or convert it to a preliminary
2 injunction.

3 THE COURT: Right.

4 But if they agree to it, then we could have a longer
5 period of time is what I am saying.

6 Am I clear on this with everybody? I mean, if they
7 come in and say, we're willing to extend it a month, and it is
8 in writing, then their lawyers would have enough time to be
9 able to figure out what the heck is going on.

10 Then you raised in your motion this issue on living
11 expenses. But, I mean, fellows, I'm not -- I never do
12 the blame game here. But nobody said one word to us about this
13 issue in any of the papers. Okay? Not that you are precluded
14 from ever -- but the reason we didn't address it is sua sponte
15 I do not have to be raising every TRO issue. Okay?

16 So if somebody wants to raise that issue -- it wasn't
17 even said on Mr. Bourassa's part, it was said on --

18 MR. CHRISTIE: Mr. Bourassa is not part of the
19 preliminary or --

20 THE COURT: Right.

21 MR. CHRISTIE: -- the temporary restraining order.

22 THE COURT: So -- but, I mean, it was said on -- it
23 was said about Mr. Santiago --

24 MR. SANCHEZ: Sanchez.

25 THE COURT: -- Mr. Sanchez and his son. But there is

1 a whole set of procedures that have to be done.

2 I mean, first of all, we don't even know if we have
3 got a listing of what the assets are. You have to have a
4 listing of what the expenses are. You have to have -- I mean,
5 all of that has to be presented, not just to the Court, but to
6 the other side.

7 Now have you started sending notices? And the
8 defendants were -- the defendants had to post \$1000 bond in our
9 opinion here.

10 Now what has happened in that?

11 MR. THURSTON: We haven't posted a bond, but we intend
12 to do so. And we have sent notices out to, well, all the
13 banking and financial institutions that we know of.

14 THE COURT: All right.

15 MR. THURSTON: And that has been done. We intend to
16 post a bond very shortly here, your Honor.

17 THE COURT: Okay.

18 MR. BAKER: Your Honor, can I ask a clarification?

19 THE COURT: Sure.

20 MR. BAKER: You said the defendants had to post a bond
21 of \$1000.

22 THE COURT: No, no, no, the plaintiff does.

23 MR. BAKER: Okay.

24 THE COURT: No, you don't have to post anything.

25 MR. BAKER: You said the defendants, so --

1 THE COURT: I'm sorry. I'm sorry, no.

2 MR. BAKER: And then he spoke up, and I said, wait a
3 minute.

4 THE COURT: No, the plaintiffs have to post a bond.
5 And they are going to do that within -- now, yeah.

6 Well, Mr. Sanchez, I have no -- in civil cases there
7 is no authority to appoint people lawyers either, so -- only in
8 criminal cases. I can just encourage you. I'm sure your life
9 -- both of your lives are probably falling apart, but this --

10 MR. SANCHEZ: Your Honor, you haven't said the half of
11 it.

12 THE COURT: Right. But this is one time where I think
13 you really need a lawyer.

14 And Mr. Christie has done a wonderful job for you.

15 MR. SANCHEZ: I appreciate it.

16 THE COURT: I mean, that's really -- he really has.
17 He worked very -- he was protecting your interests all the way
18 along, and that happens because lawyers have to be paid just
19 like anybody else --

20 MR. SANCHEZ: I understand.

21 THE COURT: -- has to be paid.

22 So just let me check with Margaret here.

23 (Discussion off the record.)

24 THE COURT: I mean do you want to talk and see if you
25 can agree to an extension or -- I mean, Mr. Christie ought to

1 read the order first.

2 MR. CHRISTIE: Judge, I would like to have the
3 opportunity to have them come to my office after this and talk
4 to them and explain fully. I don't think I can do it in 10 to
5 15 minutes.

6 MR. THURSTON: And I will say, your Honor, I -- the
7 order that you are speaking of, I think -- I had the same
8 experience as Mr. Christie where you try to access it through
9 ECL, and it just came as a blank page. The document is not in
10 there.

11 Now I don't know -- I haven't tried to go back in
12 through Pacer --

13 THE COURT: Well, did you get it?

14 MR. THURSTON: I got -- no, I got the other order; I
15 didn't get that order.

16 MR. WEINER: I didn't get it as well, your Honor.

17 MR. CHRISTIE: That's probably why I got no comments
18 about that.

19 MR. THURSTON: And that's also why we didn't even know
20 about the posting of the bond. I didn't know about that until
21 today. So --

22 (Discussion off the record.)

23 MR. THURSTON: Okay. So if we go back in through
24 Pacer, we can pull it then?

25 It didn't come through in the regular, you know, email

1 process.

2 MR. CHRISTIE: I actually get an error message when I
3 tried to get that order, so that's why I thought another one
4 was refiled.

5 THE COURT: Well, we have a really long opinion here
6 that covers everything.

7 MR. THURSTON: I'm clear I didn't get that.

8 THE COURT: And the only thing -- and the only thing
9 that is in the order -- this is the order that if the
10 plaintiffs were going to send notice to anyone, this would be
11 the order directing people what to do.

12 MR. THURSTON: Right.

13 THE COURT: It doesn't give all the facts.

14 MR. THURSTON: That's the one we -- I think we all
15 received, and that is the one I sent out with notice.

16 THE COURT: Oh, no wonder --

17 MR. THURSTON: -- to the institutions.

18 THE COURT: -- no wonder -- no wonder you said --

19 MR. CHRISTIE: Your Honor, as far as the carve out, I
20 have been in these situations before, and I believe that I can
21 work with counsel to create a carve out. We have usually done
22 it by creating a -- if he needs a new checking account, get a
23 new checking account that, you know -- right now the cash in
24 his pocket is frozen, so --

25 MR. THURSTON: Yeah. My concern, and I'll be happy to

1 discuss this, but my only concern is the money he has been
2 living off of is my client's money, and that's my concern. So
3 I would like to see if there are other assets or other forms of
4 income from which he can live off of.

5 THE COURT: You guys really need to sit down and
6 talk. And you need to sit down and talk when -- both
7 Mr. Bourassa -- do you have a bankruptcy lawyer?

8 MR. BOURASSA: Yes.

9 THE COURT: And, Mr. Sanchez, if they actually want to
10 proceed or if you aren't better off with -- legally with a TRO
11 than you are with a preliminary injunction is what I am
12 saying. So, I mean, this is less -- you know, this is not a
13 hearing, but --

14 MR. THURSTON: And perhaps, your Honor, maybe -- maybe
15 something I can discuss with counsel is a consent preliminary
16 injunction, and that consent preliminary injunction can
17 incorporate a carve out provision. That's perhaps a way to do
18 that, to solve that problem.

19 THE COURT: Well, you can do whatever.

20 Now, unfortunately, my time runs September 2nd.
21 Okay? So we need to know by the Friday before.

22 MR. THURSTON: That would be --

23 THE COURT: Oh, well, no, but can --

24 MR. THURSTON: August 28th?

25 THE COURT: Are you moving -- are you moving on August

1 19th?

2 (Discussion off the record.)

3 THE COURT: But on the 19th -- both of us are gone
4 next week.

5 MR. THURSTON: Okay.

6 THE COURT: We need it by Friday at noon if you are
7 going to move -- if you are -- Mr. Thurston, if you are moving
8 to extend it for the ten days.

9 MR. THURSTON: Yeah, I'm so moving now and if I can --
10 if I can do that.

11 THE COURT: Okay. Then we're going to enter it, but
12 we don't enter it until next Wednesday at 2:00 o'clock.

13 MR. THURSTON: Right. That's fine, your Honor.

14 THE COURT: But here's what I need from you.

15 MR. THURSTON: Okay.

16 THE COURT: All of you, Mr. Sanchez, Mr. Bourassa, I
17 want on my desk by Friday, August 28th, at noontime either a
18 proposal on how we're going to proceed on September 2nd when it
19 runs out, who are your witnesses, what are your documents -- I
20 mean, I need to know if we're proceeding. I want like a little
21 mini order telling me that.

22 If you have reached -- you're kind of jumping too on
23 this consent preliminary injunction. These fellows don't even
24 have lawyers yet.

25 MR. THURSTON: Yeah.

1 THE COURT: Okay? So if they are willing to agree for
2 another month or so on the TRO -- I know we're going to
3 ultimately be back to it, but at least they'd have some time to
4 get themselves ready.

5 MR. THURSTON: Right.

6 THE COURT: Do you understand what I am saying?

7 MR. SANCHEZ: I think I understand.

8 THE COURT: On September 2nd, on September 2nd the TRO
9 runs out at 3:00 o'clock. If at that time it -- a Court that
10 has issued the TRO there is basically a rule issues that says
11 why does this not convert into a preliminary injunction.
12 Okay?

13 Can somebody come forward basically and say, either,
14 you know, you were wrong, you got the facts wrong, you didn't
15 know this. That's why you have a hearing. Okay? And at that
16 hearing you would be saying, no, Judge, you're completely wrong
17 about this.

18 So that could happen or it could be converted into a
19 preliminary injunction automatically. Okay? If nobody comes
20 forward, we would just convert it into the preliminary
21 injunction.

22 Because we have this unusual situation here where
23 counsel is dropping off, it is going to put you under the gun
24 on September 2nd because I can't do anything about the
25 September 2nd unless you, after you consult with Mr. Christie,

1 you call Mr. Thurston and say, I'll agree for 30 days, 45 days,
2 but I need some living expenses, something like that. I mean,
3 that could be like a way you could go about that.

4 And then -- it is going to happen again though, when
5 the time is up, the same thing is going to happen, it is going
6 to be we -- I have to either convert it into a preliminary
7 injunction or it will get dissolved.

8 Is that --

9 MR. SANCHEZ: Well, I guess my first question
10 is -- excuse me, pardon my ignorance, your Honor, what is a
11 preliminary injunction? I mean, what does it --

12 THE COURT: What's the difference between a TRO and a
13 preliminary injunction?

14 MR. SANCHEZ: Because you just kind of said that
15 basically the same thing is going to happen again.

16 THE COURT: Well, it could happen again. But before a
17 Court enters a preliminary injunction -- this is not the trial.

18 MR. SANCHEZ: I understand.

19 THE COURT: This is -- again, when there is an
20 allegation that people have lost money or something else, it
21 could be a job, it is not just necessarily money, and you want
22 to freeze the conduct is basically what you are doing until you
23 can have a complete trial on the merits.

24 MR. SANCHEZ: Okay.

25 THE COURT: Because you need to do discovery. You

1 need to get your witnesses. You need to come up with your
2 defenses if you are going to -- whatever you're going to do so
3 in -- this is an interim step. The first interim step is the
4 TRO. That's like less -- we didn't have a hearing on the
5 TRO --

6 MR. SANCHEZ: Okay.

7 THE COURT: -- we did it on papers.

8 On the preliminary injunction you're entitled to a
9 hearing. You could testify. Mr. Bourassa could testify.

10 MR. SANCHEZ: I understand.

11 THE COURT: You could bring witnesses in.

12 And then -- that still is not the final injunction.
13 The final injunction doesn't happen until after the trial. But
14 it does freeze everything till the trial. And here we're
15 talking about basically freezing money so that if there are any
16 assets, and if you are found liable, two ifs, then those folks
17 have a way to get their money back.

18 MR. SANCHEZ: Okay. I think I understand.

19 THE COURT: Okay? So the effect of the TRO, we're
20 not -- we don't freeze any more -- nothing more happens to you,
21 it is more duration than scope is what I'd say. The scope is
22 the same for the TRO as the preliminary injunction. Only if a
23 preliminary injunction is issued, then it will last until the
24 time of the trial, whenever that is.

25 MR. SANCHEZ: Okay.

1 THE COURT: And then it gets -- if you are
2 convicted -- it is not convicted, but if you are found liable,
3 then after the trial, one of the remedies the Court can do is
4 make it a permanent injunction. So you go from temporary,
5 preliminary --

6 MR. SANCHEZ: I understand.

7 THE COURT: -- permanent.

8 MR. SANCHEZ: Very good explanation. Thank you.
9 Thank you, your Honor.

10 THE COURT: Do you agree, Mr. Christie? I mean,
11 that's pretty --

12 MR. CHRISTIE: You have done my work for me, Judge.

13 THE COURT: Okay.

14 Well, and I think they need a lawyer, so -- but
15 I -- I'm not paying for it, so --

16 (Laughter.)

17 THE COURT: What the heck. Okay.

18 So on that Friday -- by that Friday at noon.

19 So now, Mr. Sanchez, Mr. Thurston could not contact
20 you when you had a lawyer. Now he can contact you directly and
21 you can contact him directly. You know Mr. Christie is going
22 to explain to you if you open your mouth and you say things
23 about admissions or any of that stuff, that's, you know,
24 between you and your maker.

25 But he has a right to now call you as he had a right

1 to call Mr. Christie before.

2 The minute you get a lawyer, there can be no contact
3 between Mr. Thurston. So one of the reasons for the lawyers
4 are you are not having any direct communication with the
5 lawyer.

6 So Mr. Thurston has a right to -- have you done any
7 deps in this case? I wanted to know.

8 MR. THURSTON: No, your Honor. And that's because we
9 haven't even gotten the written discovery responses back, which
10 I believe are due tomorrow, your Honor.

11 THE COURT: Well, are you going to talk to
12 Mr. Christie about that?

13 MR. THURSTON: Yeah. And --

14 THE COURT: Okay.

15 MR. THURSTON: -- we have at least discussed -- we
16 have had -- exchanged some communications regarding document
17 production, not necessarily the responses to discovery, but the
18 actual documents themselves. And we're working that out, that
19 exchange out.

20 I'm going to be providing CDs, a couple CDs worth of
21 information to counsel. Well, actually, I guess I'll be
22 providing them directly to Mr. Sanchez and Mr. Bourassa and to
23 Mr. Baker.

24 And you have their addresses or you have that --

25 MR. THURSTON: Yeah, they are in Mr. Christie's

1 motion, so --

2 THE COURT: Okay.

3 MR. THURSTON: And I guess in the front of the Court I
4 should ask for -- to Mr. Bourassa and Mr. Sanchez both, your
5 emails were in there. Is it acceptable to serve you
6 information and documents by email?

7 MR. SANCHEZ: Yes.

8 MR. THURSTON: Okay. Thank you.

9 THE COURT: Okay.

10 MR. CHRISTIE: We have only had one kind of hiccup on
11 the document production is that plaintiffs are requesting \$427
12 in cost for the documents. And they also -- and represented
13 that all the documents are on a DVD or CD, but the copying
14 costs of that is over seven -- is only \$7.

15 Obviously my clients would be willing to pay the \$7,
16 but they just don't have the wherewithal to pay four hundred
17 and some dollars in this case.

18 MR. THURSTON: And let me explain that, your Honor.
19 Those are not our photocopying or those charges, those are
20 charges that came from the banks who under administrative code
21 are entitled to charge a requesting party for documents to
22 produce -- to research and produce documents pursuant to
23 subpoena. There is an administrative code that's directly on
24 point.

25 And so therefore we got charged a pretty

1 substantial -- we have thousands and thousands of pages, and
2 most of those are from banks, and we got charged costs.

3 And actually I'm trying to actually do a favor to the
4 defendants in the sense that, you know, they could certainly go
5 and subpoena those documents, but they would receive the same
6 charges as we did.

7 And I -- I would just request that if they want copies
8 of those documents, that at least defray some of those costs
9 that we have incurred that they would have to incur if they did
10 it themselves.

11 THE COURT: Well --

12 MR. CHRISTIE: I'm not sure those costs are
13 compensable at this time. Maybe to the prevailing party they
14 are.

15 What is compensable is maybe the copying costs
16 providing documents.

17 THE COURT: Right.

18 MR. BAKER: But since they're all on DVDs or CDs, the
19 costs --

20 THE COURT: So you have them on DVDs?

21 MR. THURSTON: Well, your Honor, yeah, that's because
22 I scanned them in all by myself, by hand.

23 THE COURT: And you're saying you're not going to give
24 them to them until they are paid the --

25 MR. THURSTON: Well, your Honor, they can come and

1 look at the hard copies if they want. I'm happy to do that to
2 them.

3 But I just figured as a courtesy, since I scanned them
4 all in --

5 THE COURT: Mr. Thurston, I think you -- I don't know
6 under all these statutes if -- you know, what you are going to
7 be -- you as the moving party might be entitled to for costs at
8 the end of the case, but we're not going to be able to move
9 along unless you give them -- I'm not telling you to go xerox
10 the hard copies, I'm telling you I think you should give them
11 the CDs.

12 MR. THURSTON: Okay, your Honor. I mean --

13 THE COURT: Keep those together. This happens to
14 plaintiffs's counsels in class cases all the time.

15 MR. THURSTON: Okay.

16 THE COURT: You're going to have all these costs at
17 the end.

18 MR. THURSTON: They will be in the bill of costs
19 then. You know, I was trying to save them some money in the
20 meantime, but --

21 THE COURT: Well, but I think right now you have got
22 it together much more than they have got it together. And I'm
23 not going to be able to even do this hearing.

24 MR. THURSTON: Okay.

25 THE COURT: I mean, you're also doing it so that we

1 can proceed along here.

2 MR. THURSTON: Okay.

3 THE COURT: I want to tell you one more thing. I just
4 want to explain one more thing to the both of you.

5 Your trial judge you just met is Harry Leinenweber.
6 Okay?

7 MR. SANCHEZ: Yes, ma'am.

8 THE COURT: So most of your case is going to be in
9 front of Harry Leinenweber. He referred the injunction down to
10 us. And under the statute, just so you know, under the
11 magistrate judge statute, any ruling I make you have ten days
12 to file objection to the district court. Okay? It is kind
13 of -- I want to just give you a warning on. And if you want
14 to, you can file any objections. And you can say we think no
15 one got this wrong, we think she got this wrong. She used the
16 wrong standard. Whatever you want to do.

17 And I just want you to know so either for the TRO or
18 for the preliminary injunction or basically -- you can
19 basically appeal anything I -- basically say to Judge
20 Leinenweber. But he's doing all the discovery. I don't think
21 we're doing discovery in this case either.

22 So I'm just telling you, Mr. Thurston, in order for my
23 preliminary injunction to work, I want you to give them the
24 disks.

25 MR. THURSTON: Okay. I will do so, your Honor.

1 THE COURT: Do you have a discovery schedule or any
2 kind of more dates with Judge Leinenweber?

3 MR. BAKER: The only date is September 10th he will be
4 ruling on a motion to dismiss. And then there is a status some
5 time in October, but that might be changed.

6 THE COURT: Okay. All right.

7 MR. THURSTON: No discovery has been opened up.
8 General discovery by Judge Leinenweber.

9 THE COURT: Did we give Judge Leinenweber a copy of
10 our two opinions?

11 (Discussion off the record.)

12 THE COURT: All right. I want him to get those.
13 Okay.

14 MR. THURSTON: And the next step, I think, your Honor,
15 if -- if Judge Leinenweber denies the motion to dismiss, the
16 next logical step, we -- or two steps, I guess would be. One
17 is to do a general discovery process, but also a motion to
18 certify the class.

19 THE COURT: Right.

20 MR. THURSTON: I think those are the next steps that
21 will happen with Judge Leinenweber.

22 THE COURT: Okay.

23 MR. CHRISTIE: And (unintelligible) other
24 clarification, Judge, I -- Mr. Bourassa has not filed an answer
25 or otherwise plead --

1 THE COURT: Right.

2 MR. CHRISTIE: -- pleading with the Court.

3 THE COURT: Because of the stay.

4 MR. CHRISTIE: And I -- because of the stay.

5 And I mentioned that to Judge Leinenweber and told him
6 that either he'll join Mr. Sanchez with his motion to dismiss
7 or ask that his obligation be deferred until he rules on the
8 motion to dismiss. He suggested just joining the motion to
9 dismiss, which is what Mr. Bourassa will do.

10 THE COURT: Okay. All right. Well, that's good.
11 Okay.

12 MR. CHRISTIE: As far as discovery, counsel had asked
13 me today or yesterday how much we -- we are ready to produce
14 documents, and we will give it to either a copying service of
15 counsel's choice or for them to -- but there is about 20, 25
16 banker boxes of documents, so -- and it is in the possession of
17 Mr. Sanchez.

18 THE COURT: Do you want to go over first and see if
19 you want it all?

20 MR. THURSTON: Yeah, I don't think I want to copy 25
21 boxes.

22 THE COURT: Okay.

23 MR. THURSTON: I want to see what's there.

24 THE COURT: Okay. So he may wish to come over. And
25 then that would cut down the xeroxing. Okay?

1 You need to keep -- I know this is -- this is just a
2 little free advice here. You need to keep some kind of an
3 inventory of what you are turning over because if there is a
4 question down the road that you didn't turn them over -- most
5 people use a Bates stamp, some kind of a document -- I mean,
6 the lawyers use some way for you to be able to prove what
7 documents you had and what you turned over.

8 Our clerk's office has not a bad pro se manual for
9 helping people who -- is there one in the box there?

10 THE CLERK: There may be one.

11 MR. THURSTON: And I'll also offer with the document,
12 you know, we can make office space available. If Mr. Sanchez
13 can bring the boxes to the location, he's welcome to stay and
14 monitor the review. But that will just give us a little bit
15 more space rather than being -- invading his home to do that.

16 THE COURT: So that might be a good thing to do.

17 All right. So you guys have a homework assignment. I
18 want by noon on Friday, August 28th, a notice to me on whether
19 we are going to proceed on the 2nd. If you are proceeding, who
20 your witnesses are, give me a little idea on how long it would
21 take, if I have to get a court reporter -- I mean, if I have to
22 get a court reporter.

23 If you are going to agree for a short period of time,
24 I would like to see a draft agreement so that we know that --
25 if you are going to agree to the TRO for a limited period of

1 time to get counsel.

2 Mr. Sanchez, Mr. Bourassa, if you have lawyers, I
3 want -- I need their appearances on file or something in this
4 memo so that I have got a sense of September 2nd.

5 So let's make it, Lynette, September 2nd. We'll make
6 it in the morning. So 9:00 o'clock.

7 THE CLERK: We have a 9:00 and a 8:30 and a 10:00
8 o'clock.

9 THE COURT: Is the 10:00 o'clock a settlement?

10 THE CLERK: One is a settlement.

11 THE COURT: Okay. And on then something --

12 THE CLERK: Unless you want me to reschedule --

13 THE COURT: No, no.

14 THE CLERK: -- the 9:00 A.M.s

15 THE COURT: The 9:30. We'll just do 9:30 because it
16 doesn't run out until 3:00 o'clock. I mean, I -- I'm hoping
17 you're going to figure something out. But if you are not, then
18 we're just going to go ahead.

19 You're not going to reschedule it now.

20 THE CLERK: 8:00, 8:30.

21 THE COURT: They live -- they all live really far.

22 MR. THURSTON: Yeah.

23 THE COURT: 9:30.

24 THE CLERK: Okay.

25 THE COURT: 9:30.

1 MR. CHRISTIE: I left at 5:00 o'clock to get here
2 today.

3 THE COURT: Yeah. 9:30.

4 MR. THURSTON: 9:30 would be fine.

5 THE COURT: 9:30. Okay?

6 MR. WEINER: Your Honor, if I may before we break, I
7 just want to confirm that the discovery we're talking about
8 here today is restricted to the parties to the preliminary
9 injunction. Is that correct?

10 MR. BAKER: There was a discovery deadline that --

11 MR. THURSTON: No, your know. I think that -- it was
12 discovery that was -- the scope is limited to issues in the
13 preliminary injunction.

14 THE COURT: Right.

15 MR. THURSTON: But I don't think they can limit it to
16 parties.

17 MR. BAKER: My understanding of the stay that was
18 lifted had to do with the preliminary injunction. We're not
19 parties to the preliminary junction. We have nothing really to
20 do with it. Any discovery that was -- when Mr. Thurston
21 asserted his discovery, we were parties to the preliminary
22 injunction.

23 Since -- realizing we have nothing to do with this, he
24 withdrew us with from the preliminary injunction.

25 THE COURT: Okay.

1 MR. BAKER: As such I don't --

2 THE COURT: You know what, I'm going to punt this
3 question back to Judge Leinenweber. I -- I mean, I have enough
4 to do with this injunction down here. Okay?

5 MR. BAKER: And we're not trying to be difficult. We
6 just don't want to be in -- have to go through general
7 discovery ourselves prior to our motion to dismiss.

8 THE COURT: Yeah. Why don't you meet and confer and
9 see if there is anything Mr. Thurston needs for the preliminary
10 injunction because, believe me, you're going to have two very
11 annoyed judges if we go through the whole preliminary
12 injunction and find out you had some killer document that
13 wasn't turned over.

14 So I think you and Mr. Thurston ought to have a
15 meet -- a real meet and confer and tell him kind of what the
16 scope of your documents are.

17 MR. THURSTON: And, your Honor, just to give you some
18 more information on that, I probably intend to take at least
19 two, if not three, of his clients's --

20 THE COURT: Deps.

21 MR. THURSTON: -- depositions, so they have --

22 THE COURT: Well --

23 MR. THURSTON: -- valuable information related to the
24 preliminary injunction.

25 THE COURT: And it is -- you know, I'm not here next

1 week. But I'm telling you we have to go ahead with the
2 preliminary injunction hearing unless we have got an agreement
3 here, so --

4 MR. THURSTON: Yeah. Okay.

5 THE COURT: All right?

6 MR. THURSTON: Thank you, your Honor.

7 THE COURT: All right. So I'll hear from you via
8 email on that Friday, and we'll see you back here on the 2nd.

9 MR. THURSTON: Thank you very much, Judge.

10 (Which concluded the proceedings in the above-entitled
11 matter.)

12 CERTIFICATE

13 I HEREBY CERTIFY that the foregoing is a true, correct
14 and complete transcript of the proceedings had at the hearing
15 of the aforementioned cause on the day and date hereof.

16
17 /s/ ~~Panel~~ a S. Warren
Official Court Reporter
18 United States District Court
Northern District of Illinois
19 Eastern Division

August 24, 2009
Date